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APR 2004-13

April 18, 2004

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Norton:

We request an advisory opinion on behalf of Allyson Schwartz for Congress, the principal campaign committee of Allyson Schwartz in her campaign for Congress in Pennsylvania's 13th District.

Pennsylvania's primary elections are scheduled to occur on April 27, 2004. Ms. Schwartz is a candidate in the Democratic primary. Melissa Brown is a Republican candidate for Congress in the 13th District. Should Ms. Brown and Ms. Schwartz win their respective primaries, they will run against each other in the general election.

The "Millionaires' Amendment" allows a candidate who runs against a self-funding opponent to raise funds from individuals under increased contribution limits, and to benefit from unlimited coordinated party spending. See 2 U.S.C. § 441a-1 (2003). The candidate must compare the "opposition personal funds amount" with the "threshold amount" in the election in which she is running. See 11 C.F.R. §§ 400.10, 400.41. If the opposition personal funds amount exceeds \$350,000 -- the threshold amount in a congressional election -- then the candidate may raise \$6,000 per individual, and may benefit from unlimited coordinated party spending. See 2 U.S.C. § 441a-1; 11 C.F.R. § 400.41.

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Ms. Brown was a candidate for the 13th District House seat in 1998, 2000, and 2002. Her FEC reports show that she spent significant amounts of personal funds in each of these elections. Should she spend enough personal funds in the 2004 general election to trigger Millionaires' Amendment relief, as she has before, the Schwartz campaign intends to take full advantage of the increased contribution limits the Millionaires' Amendment provides.

However, in order to plan intelligently for the general election campaign, the Schwartz campaign requires Commission guidance on the following questions:

First, if Ms. Brown contributes personal funds to her campaign before the primary election that remain on hand after the date of the primary, would these funds count toward the \$350,000 threshold with respect to the general election? The primary election and the general election are considered two separate "election cycles" under the Millionaires' Amendment. See 11 C.F.R. § 400.2. However, the carryover of unused primary election funds to the general election campaign is considered a permissible transfer under FEC rules. See 11 C.F.R. § 110.3(c)(3). Logically, the transfer of Ms. Brown's personal funds from the primary election to the general election would seem to be an "expenditure from personal funds" in the general election, and would thus trigger access to enhanced limits. See 11 C.F.R. § 400.4(a).

Second, if the carryover of Ms. Brown's personal funds into the general election is an "expenditure from personal funds" in the general election, when and how may the Schwartz campaign begin to benefit from enhanced limits? Under the rules, once the Schwartz campaign receives "actual or constructive notification" that Ms. Brown has made more than \$350,000 in expenditures from personal funds for the general election, it must calculate the opposition personal funds amount and determine whether it qualifies for increased limits. 11 C.F.R. § 400.30.

Ordinarily, this would require the Schwartz campaign to make the calculation once it has received, or is aware that a national or state party committee has received,

the Brown campaign's notice on FEC Form 10 that Ms. Brown has spent enough personal funds to exceed the \$350,000 threshold amount. See *id.* Were Ms. Brown to transfer personal funds exceeding \$350,000 from the primary campaign to the general campaign, would the Schwartz campaign be required to receive an FEC Form 10? If the Brown campaign did not timely file Form 10, would the Schwartz campaign nonetheless become eligible for the enhanced limits, and if so, under what circumstances?

These questions have immediate, practical and direct consequences for the Schwartz campaign. The campaign must be able to determine the limits under which it may raise funds, and the extent to which it may coordinate spending with party committees. The rapidly approaching primary election date of April 27 makes this question all the more urgent.

Moreover, it is Ms. Schwartz's legal options, not Ms. Brown's, on which we seek advice. To defer consideration of an advisory opinion request until after Ms. Brown actually transfers the funds could deprive Ms. Schwartz of at least two months during which she could otherwise benefit from enhanced limits and unlimited party spending. See 2 U.S.C. § 437f(a)(1). In the past, the Commission has not hesitated to advise candidates of their rights to engage in certain conduct in response to the acts of others. See, e.g., Advisory Opinion 2003-35. It should do the same here.

Accordingly, we respectfully ask the Commission to issue an advisory opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Morley", followed by a long horizontal flourish line.

Ken Morley

Campaign Manager

Allyson Schwartz for Congress

